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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,892	08/20/2001	Avigdor Rimmer	2522/1	4029

7590 04/12/2005

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EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

09/931,892

Applicant(s)

RIMMER, AVIGDOR

Examiner

Kurt Fernstrom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Federal Circuit has applied the practical application test to determine whether claimed subject matter is patentable under 35 USC 101. See *ATT Corp. V. Excel Communications, Inc.*, 172 F.3d 1352, 1359-60, 50 USPQ2d 1447, 1452-53 (Fed. Cir. 1999) and *State Street Bank & Trust Co. V. Signature Financial Group Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1600 (Fed. Cir. 1998). The test for practical application requires that a "useful, concrete and tangible result" be accomplished.

The present invention does not meet the last two requirements of the test, that is; it does not produce a result which is concrete or tangible. The claims are directed to a method for evaluating a personality of a person. While the invention is arguably useful to achieve the asserted goals, the results of the method are speculative and uncertain, and rely in large part on personal subjective interpretations of the user. Rather, different people would necessarily use the method to arrive at different results, because the subject matter of a personality of a person is necessarily of a type that cannot produce reliable, repeatable results upon repeated performance of the method.

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Additionally, for a claimed invention to be statutory, the claimed invention must be within the technological arts. Abstract ideas, and inventions that amount to the manipulation of abstract ideas, are not patentable subject matter. Such inventions fail to promote the "progress of science and the useful arts". No technology appears to be implicated in the performance of the invention. As such, the invention amounts to manipulation of abstract ideas. The step of presenting the ideas on a tangible medium such as a chart does not, by itself, bring the invention within the scope of that which advances the technological arts. See *In re Abele*, 684 F.2d 902, 214 USPQ2d 682 (1982). As a result, the claims do not contain statutory subject matter.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Horvitz, Kawano, Bryce, Shovers, Knight, Siemers, Poole, Weedman and Rossetti disclose various devices and methods for determining a person's personality.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF
April 6, 2004



**KURT FERNSTROM
PRIMARY EXAMINER**